

In the Matter of Merchant Mariner's Document No. Z-806528
Issued to: CLARIMUNDO J. DaGRACA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CLARIMUNDO J. DaGRACA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 20 May, 1951, an Examiner of the United States Coast Guard at Providence, Rhode Island, revoked Merchant Mariner's Document No. Z-806528 issued to Clarimundo J. DaGraca upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as Second Cook on board the American SS PIONEER VALLEY under authority of the document above described, on or about 14 April, 1952, while said vessel was in the port of Honolulu, T. H., he wrongfully and unlawfully had in his possession a quantity of narcotics to wit: marijuana

At the hearing, Appellant was given a detailed explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer and Appellant made opening statements and the Investigating Officer introduced in evidence a certified copy of the judgment of the U.S. District Court for the District of Hawaii dated 8 April, 1952, finding Appellant guilty of possessing marijuana in violation of law.

In defense, Appellant offered in evidence his own testimony which undertook to explain the circumstances attending his acquisition of the marijuana found in his possession.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Appellant's Merchant Mariner's Document No. Z-806528 and all other valid certificates of service and documents held by this Appellant.

From that Order, this appeal has been taken, and it is urged:

- (1) Appellant is an American citizen by derivation from his father's naturalization;
- (2) Appellant has never been in any kind of trouble in the United States;
- (3) Appellant is not a user of narcotics; and his possession on this occasion was purely accidental;
- (4) Appellant has a good reputation as evidenced by the affidavits submitted with the appeal.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 14 April, 1952, Appellant was serving as Second Cook on board the American SS PIONEER VALLEY and acting under authority of his Merchant Mariner's Document No. Z-806528 while said vessel was in the port of Honolulu, T. H.

When the vessel was boarded by Customs Inspectors, five (5) marijuana cigarettes were found in Appellant's quarters. Appellant claims the cigarettes were acquired about 16 January, 1952, when his vessel was passing through the Panama Canal; upon being told of their nature, he undertook to destroy them by throwing them on the floor - and then forgot about them, until their discovery on 14 April, 1952.

Before the United States Court, Appellant pleaded "not guilty" but was found guilty of possessing five (5) marijuana cigarettes and approximately three (3) grains of loose marijuana in violation of 21 United States Code, sec. 184(a), but sentence was suspended and Appellant placed on probation for one year.

OPINION

The Examiner who saw and heard Appellant testify has observed that much of that testimony is "improbable, if not incredible." I agree. The interval of time between his acquisition of the marijuana and its discovery in his quarters raises a serious challenge to his statement that he intended to destroy the cigarettes. The presence of loose marijuana is not explained. I find no merit in any point presented by this appeal.

ORDER

The Order of the Examiner dated at Providence, Rhode Island, on 22 May, 1952, is
AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 12th day of September, 1952.